

1 The Honorable James L. Robart
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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15 JOHN DOE, et al.,
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Plaintiffs,

v.

DONALD TRUMP, et al.,
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Defendants.

20 Civil Action No. 2:17-cv-00178JLR
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DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO SEAL AND
CROSS-MOTION TO CONTINUE
SEAL

(RELATING TO BOTH CASES)

23 JEWISH FAMILY SERVICE OF
24 SEATTLE, et al.,
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Plaintiffs,

v.

DONALD TRUMP, et al.,
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Defendants.

29 Civil Action No. 2:17-cv-01707JLR
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1 Pursuant to Federal Rule of Civil Procedure 26(c) and Local Civil Rule 5(g)(3),

2 Defendants respond to Plaintiffs' Motion to Seal, ECF No. 184, and also respectfully move this
 3 Court to order that the materials filed under seal by Plaintiffs in connection with Plaintiffs'
 4 February 19, 2019, letter brief remain under seal. The information in question, if disclosed
 5 publicly, would suggest the identity of a country listed on the Security Advisory Opinion
 6 ("SAO") list—information that this Court has previously protected from public disclosure in
 7 this case.

8 Specifically, in its Order Granting in Part and Denying in Part Plaintiffs' Joint Motion to
 9 Compel, ECF No. 171, the Court addressed the parties' dispute concerning "information that
 10 would tend to reveal the names of the SAO countries." *Id.* at 23. Although Plaintiffs
 11 "complain[ed] that the 'attorneys' eyes only' protective order offered by Defendants [was]
 12 overly strict," the Court ordered that Defendants were "only required to" "produce the SAO
 13 information" "pursuant to a protective order[.]" *Id.* at 24.

14 The same information is again at issue now. Plaintiffs redacted from their February 19,
 15 2019, letter brief and attached Exhibit A references to one particular country, and a reasonable
 16 person reading those references in context would discern that the country mentioned is an SAO
 17 country. *See, e.g.*, Ex. A to Pls.' Letter Br., ECF No. 183-1, at 104:2-3 (discussing the country
 18 in the context of a question about SAO nationals). Accordingly, because disclosure of the
 19 redacted material could reveal law enforcement sensitive information, the Court should order
 20 the unredacted copies remain under seal.

21 In the Ninth Circuit, there is an exception to the strong preference for public access to a
 22 judicial record where, as here, the materials in question are "tangentially related to the merits of
 23 a case," such as "sealed materials attached to a discovery motion unrelated to the merits of a

1 case[.]” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097-1101 (9th Cir. 2016);
 2 *see also Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (“[F]or a
 3 sealed discovery document [attached] to a non-dispositive motion . . . the usual presumption of
 4 the public’s right of access is rebutted.” (internal quotation marks omitted; second alteration in
 5 original)). For such materials, “a party need only satisfy the less exacting ‘good cause’
 6 standard” to justify filing under seal. *Ctr. For Auto Safety*, 809 F.3d at 1097. Here, the good
 7 cause standard is met because disclosure of the sealed information could reveal law enforcement
 8 sensitive information. *See* Decl. of J. Neal Latta in Supp. of Defs.’ Opp’n to Pls.’ Joint Mot. to
 9 Compel, ECF No. 169-2. Moreover, Defendants have complied with Local Civil Rule
 10 5(g)(3)(A), which requires that the parties “explore redaction and other alternatives to filing
 11 under seal.” Here, minimally redacted versions of the sealed documents have already been filed
 12 on the public docket. *See* ECF Nos. 183, 183-1.

14 Pursuant to Local Civil Rule 5(g)(3), on February 19, 2019, counsel for Defendants
 15 conferred with Plaintiffs’ counsel concerning the materials at issue. The conference took place
 16 via e-mail between Mariko Hirose, counsel for Plaintiffs, and Joseph Dugan, counsel for
 17 Defendants, with other counsel copied. Defense counsel understands both from that e-mail
 18 communication and from Plaintiffs’ submission that Plaintiffs oppose Defendants’ request
 19 herein.

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 22 Dated: February 19, 2019

Respectfully submitted,

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17 **CERTIFICATE OF SERVICE**

18 I certify that on February 19, 2019, a copy of the foregoing document was electronically
19 filed with the Clerk of the Court using the CM/ECF system, which will send notification of such
20 filing to all counsel of record.

21 DATED February 19, 2019.

22 /s/ Joseph C. Dugan
23 JOSEPH C. DUGAN